

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD J. DAVIS, JR.,	§
	§ No. 250, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0909017385
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 8, 2011

Decided: July 27, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 27th day of July 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Ronald J. Davis, Jr., filed an appeal from the Superior Court's April 25, 2011 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in January 2010, Davis plead guilty to Escape in the Second Degree pursuant to a plea agreement with the State, wherein Davis admitted that he was eligible for sentencing as an habitual offender under Del. Code Ann. tit. 11, § 4214(a). Davis was sentenced as an habitual offender to 2 years of Level V incarceration, to be followed by 1 year of Level III probation.

(3) In this appeal from the Superior Court's denial of his Criminal Rule 35(a) motion for correction of illegal sentence, Davis claims that the Level III portion of his sentence should be stricken because he was sentenced to 2 years, and not 3 years at Level V.

(4) Relief under Rule 35(a) is available where the sentence imposed exceeds the statutorily authorized limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance or is a sentence that the judgment of conviction did not authorize.²

¹ Supr. Ct. R. 25(a).

² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

(5) The Superior Court had the authority to sentence Davis to 2 years of Level V incarceration, as that is the maximum sentence permitted by Del. Code Ann. tit. 11, §§ 1252 and 4205(b) (7). Those statutes govern Class G felonies such as second degree escape. Moreover, under Del. Code Ann. tit. 11, § 4204(1), the sentencing judge was required to impose an additional period of probation of not less than 6 months to facilitate the defendant's transition back into society. Under that statute, that probationary period may, at the discretion of the court, be in addition to the maximum sentence of imprisonment authorized by the applicable criminal statute. Nor does Davis' probationary sentence of 1 year at Level III violate Del. Code Ann. tit. 11, § 4333(b), which specifies maximum probationary terms for particular crimes. Because Davis' sentence was legal under Rule 35(a), the Superior Court correctly denied his motion for correction of illegal sentence.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice